IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 115 of 2000

Date of decision: 17.7.2007

State of H.P. **…Appellant.**

Versus

Alaf Deen **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. Ashok Chaudhary, Addl. A.G.

For the respondent : Mr. Rakesh Jaswal, vice counsel.

Surjit Singh, Judge(Oral)

By this appeal, State of Himachal Pradesh has challenged the judgment of the trial Magistrate, whereby the respondent, who had been sent up for trial for offences punishable under Section 379 of the Indian Penal Code and Sections 41 and 42 of the Indian Forest Act, has been acquitted.

2. Prosecution case, as per record, may be summed up thus. On the night intervening 3rd/4th April, 1988 respondent went to a forest depot within the jurisdiction of Police Station, Amb where timber of Lot No. 4, belonging to H.P. Forest Corporation, had been stacked. He allegedly loaded 80 logs of 'Chil', 10 cubic meters of pulp-wood, 20 sleepers and three pieces of logs in his truck on the number plate of which letters 'HIU AF' were written. The aforesaid stolen forest produce was carried to Ludhiana, where the truck with the produce loaded therein, was spotted by

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Whether reporters of the local papers may be allowed to see the judgment?

PW-5 Rajinder Singh, Assistant Manager of H.P. Forest Corporation, on 4.4.1988 at 7.00 a.m. PW-5 Rajinder Singh, accompanied by Rakesh Kumar, DRO and Govind Ram, Peon, was present at Ludhiana that day to conduct raids to detect theft and illicit transportation of timber from Himachal Pradesh to Punjab. When the truck was sought to be got stopped by Rajinder Singh, the respondent, who was driving it, ran away from the spot. Rajinder Singh then reported the matter to the police of Police Chowk Basantpur Ludhiana. The police of the said Police Station informed all the police check posts through wireless message and directed them to intercept the truck, in question. However, the truck was not found anywhere. Around 1.00 in the after-noon the stolen produce, bearing hammer mark of Lot No. 4 of H.P. Forest Corportation, was found behind one industry at Ludhiana. The same was taken into possession. S.D.M. Una was informed about the recovery of the aforesaid produce. On 8.4.1988 report was lodged with the police of Police Station, Amb in Una District about the theft of the aforesaid forest produce from the concerned depot, by PW-3 Anjani Kumar, Assistant Manager, Nehri Forest Corporation. The timber that was recovered by Ludhiana Police was identified to belong to the concerned depot by Anjani Kumar (PW-3), Kashmir Singh (PW-4) and Neelam Kumar (PW-6).

3. Trial Court has acquitted the respondent holding that the evidence of the prosecution is full of contradictions, discrepancies and infirmities and does not inspire confidence.

4. I have heard the learned Additional Advocate General for the appellant – State and the learned counsel for the respondent and also gone through the record.

5. It is the case of the prosecution itself that on the night intervening 3rd/4th April, 1988 PW-4 Kashmir Singh and PW-6 Neelam Kumar had spotted the respondent loading and carrying the forest

produce, in question, in the truck on the number plate of which letters 'HIU AF' were written. But the matter was reported to the police on 8.4.1988 and that too after the in-charge Assistant Manager, namely Anjani Kumar (PW-3), had come to know about the recovery of abandoned forest produce belonging to his depot at Ludhiana. The fact creates reasonable doubt that the story put-forward by PW-4 Kashmir Singh and PW-6 Neelam Kumar that they had seen the respondent stealing the forest produce and running away with the same in his truck, might have been cooked up only after the forest produce was recovered by Ludhiana Police and they came to know about its recovery. It may be stated that in the FIR that was lodged with the Amb Police on 8.4.1988, it is mentioned that the forest produce had been recovered at Ludhiana.

6. Again, even though it is the prosecution's own case that Kashmir Singh (PW-4) had lodged the report to the Assistant Manager on 4.4.1988 itself, vide Ext. PW-3/A, no action could be taken thereon, because Assistant Manager was on leave, but in the FIR there is no mention of this report (Ext. PW-3/A) by PW-4 Kashmir Singh. Therefore, the possibility of this report, which is dated 4.4.1988, having been fabricated only after the official in-charge of the concerned depot came to know about the recovery of the forest produce, belonging to their depot, at Ludhiana came to their notice, cannot be ruled out. More over, in Ext. PW-3/A name of the respondent has been incorporated by way of over-writing. Initially the name of the driver of the truck was written as 'Karam Deen', but by overwriting it has been made to read 'Alaf Deen'. No explanation for this overwriting has been put-forward.

7. Evidence about the respondent having been spotted with the truck with letters 'HIU AF' written on the number plate thereof at Ludhiana is also doubtful. Even though PW-5 Rajinder Singh in his cross-examination says that he spotted the truck with the respondent in driver's

seat, but the two other officials, accompanying him, namely PW-8 Rakesh Kumar and PW-9 Govind Ram, do not corroborate him. Both of them were cross-examined by the prosecution with the leave of the Court. They denied the suggestion put to them in their cross-examination that a truck, with letters 'HIU AF' written on its number plate with the respondent in driver's seat, was spotted at Ludhiana. There appears to be no reason to disbelieve the testimony of these two witnesses, because they were not confronted with any previous statement of theirs.

8. In view of the above stated position, I do not think the trial Court has committed any illegality in holding that the case does not stand proved beyond reasonable doubt. Hence the appeal is dismissed.

July 17, 2007 (BC) **(Surjit Singh)**
Judge